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No. 91-633

In The
Supreme Court of the United States
October Term, 1991

PRINCIPAL FINANCIAL GROUP a/k/a OR d/b/a
PRINCIPAL MUTUAL LIFE INSURANCE CO.,

Petitioner,

vs.

BARBARA CAROLINE THOMAS,

Respondent.

Petition For Writ Of Certiorari To The
Supreme Court Of Alabama

RESPONDENT'S BRIEF IN OPPOSITION

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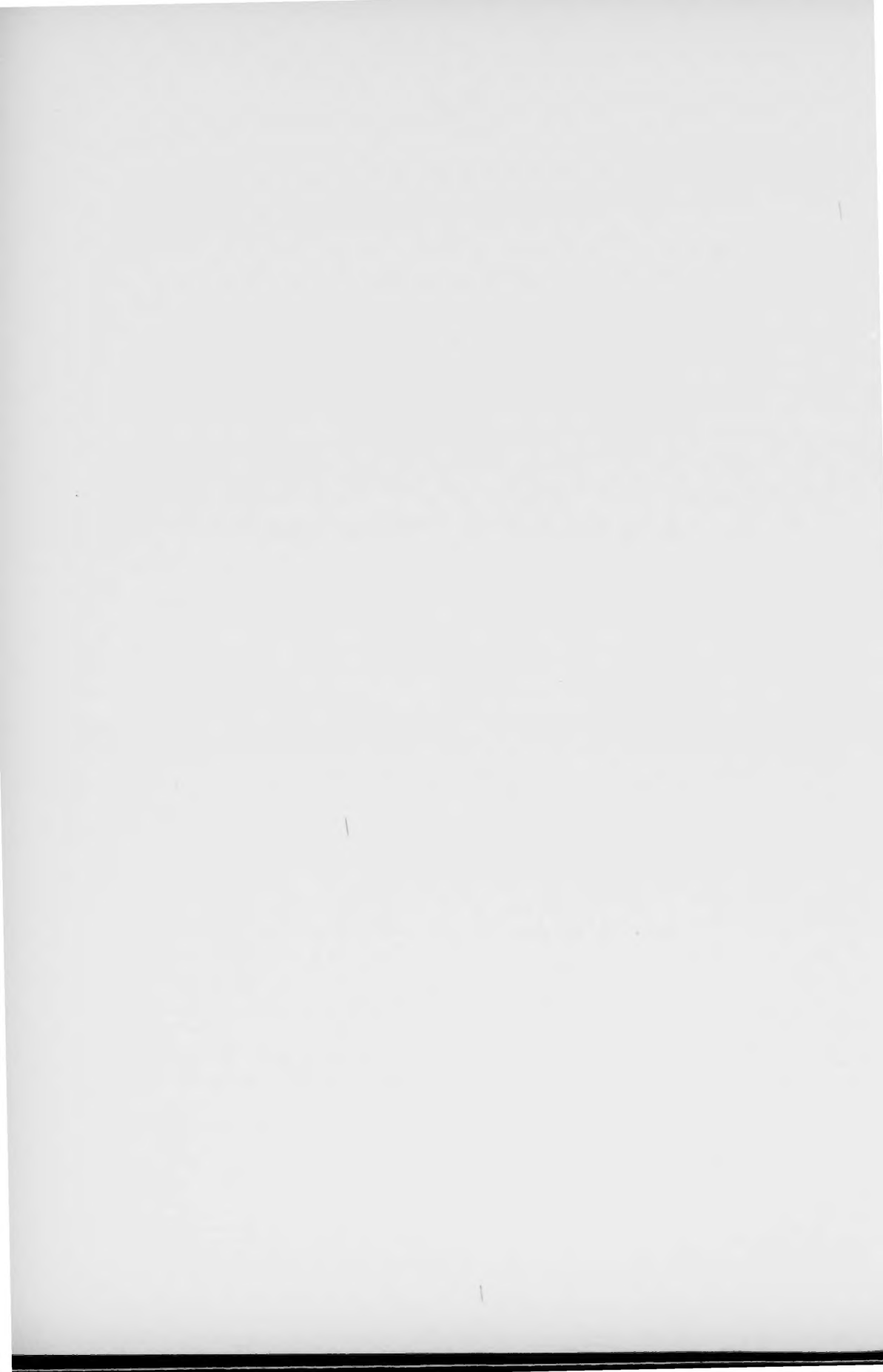
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STATEMENT OF THE CASE

Petitioner seeks review in this Court for no reason other than to obtain one more forum in which to protest its innocence.¹ Although the petition makes eloquent reference to constitutional issues, petitioner seeks nothing more than a fourth² re-examination of case-specific facts,

¹ Despite the lower courts' repeated findings of *conscious and intentional* misconduct, petitioner proposes to reassert in this Court that "its denial of respondent's claim was not 'wrongful' at all." [Pet. at 18].

² The Alabama Supreme Court first reviewed this case following the trial court's grant of judgment notwithstanding the

and a declaration that twelve jurors, a learned and experienced trial judge, and eight justices of the Alabama Supreme Court simply erred in making *factual findings* regarding petitioner's conduct.

This intendment is obvious from the petition, which grossly mischaracterizes the nature of this case. Contrary to petitioner's assertion (Pet. at p. 3), this case does *not* arise out of a dispute over the "interpretation" of a provision in an insurance policy. Instead, this case arises out of petitioner's conscious, intentional, and bad faith refusal to pay a valid insurance claim.

In fact, the trial court expressly found that petitioner knew Ms. Thomas' claim was valid and that it violated the custom and practice of the insurance industry by denying her claim. [Pet. at 23a-25a]. The trial court also found that petitioner's claims examiners purposefully

jury's verdict. In a very detailed and lengthy (nearly 40 pages) opinion, the Alabama Supreme Court found sufficient evidence to support the jury's finding that petitioner intentionally and in bad faith denied respondent's claim. [Pet. at 28a-65a]. The Alabama Supreme Court then remanded the case to the trial court "for it to consider whether the \$750,000 damages award was excessive . . . in accordance with *Hammond v. City of Gadsden*, 493 So. 2d 1374 (Ala. 1986), and *Green Oil Co. v. Hornsby*, 539 So. 2d 218 (Ala. 1989)." [Pet. at 61a]. On remand, the trial court carefully considered the excessiveness issue and, in an equally detailed order, rejected petitioner's arguments. [Pet. at 14a-27a]. Petitioner then appealed the trial court's ruling. On second appeal, the Alabama Supreme Court, after independently reviewing the evidence, likewise rejected petitioner's excessiveness claims. [Pet. at 1a-13a]. Hence, granting the instant petition would constitute the *fourth* substantive review of the jury's verdict.

disregarded information in petitioner's claims file and knowingly violated petitioner's internal claims policies which required payment of this claim. [*Id.*] Finally, the trial court concluded "at a minimum" that petitioner's claims adjusters "consciously and intentionally" refused to investigate Ms. Thomas' claim despite knowledge they had insufficient information upon which to deny the claim. [*Id.*]

The Alabama Supreme Court likewise concluded that petitioner was guilty of intentional misconduct. The court's opinion from the first appeal reveals the following:

"The evidence in this case was such that the jury could have reasonably found: that Principal Mutual contracted with the University to provide life insurance for its employees and their 'dependents'; that the policy was payable upon the death of a 'dependent,' whether death was the result of an accident or an illness; that each claim submitted to Principal Mutual was reviewed on a case-by-case basis; that policy language was not always interpreted literally; that a manual promulgated by Principal Mutual and used by its claims examiners prohibited a narrow and unreasonable interpretation of the language of the policy; that according to the custom and practice within the insurance industry, Ms. Warren should have been considered to be a 'dependent' within the meaning of the policy because she was rendered physically incapable of attending school by a debilitating illness that eventually caused her death; that at least two of the examiners who reviewed Ms.

Thomas's claims, Ms. Robbins and Mr. Wallace, exhibited confusion as to exactly what circumstances would warrant payment within the context of this case; that all of the examiners involved in the review of the claim, including Ms. Davis and Mr. Kaplan, apparently disregarded the claims manual and placed a narrow and restrictive interpretation on the policy language that was contrary to the interpretation generally placed on such language within the industry; and finally, and perhaps most importantly, that throughout the claims review process, Principal Mutual's examiners either intentionally or recklessly failed to subject the results of the investigation to a cognitive evaluation and review.

"In the letter denying the claim, Ms. Robbins misstated the facts: '[Ms.] Warren was last on the role [sic] at school through September 1985. *She then became disabled and died on March 10, 1987.*' (Emphasis supplied.) Principal Mutual's claim file showed: '*Only reason she wasn't in school beyond 9/85 was because she was sick.*' It appears to us that Principal Mutual refused to believe what all of the evidence that it had before it showed - that Ms. Warren could not attend school from September 1985 until her death because she was dying of cancer. Ms. Warren's physician testified that he did not believe that Ms. Warren could physically attend school after June 1985. However, she did attend through August 1985. There was nothing to substantiate Principal Mutual's assertion that Ms. Warren became disabled after she had ceased

attending school. To the contrary, all of the evidence showed that Ms. Warren stopped attending school because she was physically unable to attend."

[Pet. at 58a-60a]. Following remand to the trial court, the Alabama Supreme Court observed in its second opinion:

"After evaluating all of the evidence, [twelve] impartial jurors found that [the claim] was not paid because the insurance company's claims examiners *intentionally and recklessly* failed to subject the results of their investigation of the mother's claim to cognitive evaluation and review and found that the insurance company had no lawful basis for denying the mother's claim.

[Pet. at 2a-3a (emphasis added)].

Hence, this is hardly a case where petitioner "had no way of knowing" that its failure to pay policy benefits to Thomas might result in the imposition of punitive damages. [Pet. at 25]. To the contrary, twelve jurors, the trial judge, and eight members of the Alabama Supreme Court concluded that petitioner intentionally and knowingly refused to pay a valid claim without any lawful or legitimate basis for such refusal.

SUMMARY OF ARGUMENT

Petitioner proposes to raise substantial constitutional challenges to the Alabama Supreme Court's affirmance of the jury's bad faith verdict on the purported ground that it "had no way of knowing" that its intentional failure to pay a valid insurance claim might result in the imposition

of punitive damages. [Pet. at 25]. Not only is this contention completely at odds with the established facts in this case, petitioner at no time effectively raised or pressed this issue in the trial court or in the Alabama Supreme Court. Consequently, neither of the courts below considered this issue. Due to the absence of a properly developed record, this Court should deny review.

As its second and remaining issue, petitioner contends the punitive damages in the instant case are so disproportionate to the amount of compensatory damages that the verdict is unconstitutional under the due process clause. Rule 10 provides that "[a] petition for a writ of certiorari will be granted only when there are special and important reasons therefor." The instant petition meets none of the criteria enumerated in Rule 10. The Alabama Supreme Court's decision does not conflict with any decision of a federal court of appeals or any state court of last resort; nor does the Alabama Supreme Court's decision conflict with any decision of this Court. Indeed, contrary to petitioner's assertions, the Alabama Supreme Court's opinion is fully consistent with this Court's decision in *Pacific Mutual v. Haslip*, 111 S. Ct. 1032 (1991), as well as other state and federal appellate decisions announced since *Haslip*. In fact, this Court expressly rejected petitioner's arguments in *Haslip* itself. Similarly, the Supreme Courts of Alabama and Pennsylvania and the Fifth Circuit Court of Appeals have also rejected the strict proportionality argument.

Additionally, Alabama in 1987 enacted comprehensive "tort reform" legislation which places a ceiling on punitive damages in most cases, drastically narrows the imposition of vicarious liability for punitive damages,

and imposes numerous other procedural safeguards. Ala. Code §§ 6-11-20 through 6-11-30 (1987). These provisions are not applicable to the present case – which was brought before the effective date of the legislation – but they render petitioner's challenges to Alabama's system for imposing punitive damages of historical interest only.

Petitioner asks this Court to review a jury's verdict which has already been thoroughly and specifically reviewed for excessiveness *on two separate occasion*. In *Pacific Mutual v. Haslip*, *supra*, this Court rejected the argument that Alabama's system of awarding punitive damages was inadequate to satisfy the due process clause. The only remaining inquiry after *Haslip*, at least insofar as a properly reviewed *Alabama* punitive damages verdict is concerned, is whether the amount of the jury's verdict is *reasonable* under the facts and circumstances of a given case. Both the trial court and the Alabama Supreme Court found the jury's verdict to be reasonable under the evidence.

At best, Petitioner seeks nothing more than to have this Court conduct a fact-intensive review of the evidence and to second-guess the findings of the Alabama Supreme Court and the trial court. Although petitioner obviously disagrees with the conclusions of the courts below, it has failed to demonstrate that this case presents an issue of sufficient importance such that this Court should exercise certiorari jurisdiction.

REASONS FOR DENYING THE PETITION

A. VAGUENESS

1. Petitioner Failed to Timely Raise Its Vagueness Issue

It is undisputed that none of the courts below addressed petitioner's vagueness argument. The reason for this is simple: petitioner completely failed to raise this issue before the Alabama Supreme Court. Petitioner likewise failed to raise the vagueness issue in its answer to the complaint, its motion for summary judgment, its motions for directed verdict, or in its original motion for new trial. While petitioner did attempt to amend its motion for new trial (following remand from the first appeal) to include a vagueness claim, the issue was not passed upon by the trial court or the Alabama Supreme Court.³

³ Petitioner insists that it "raised this claim before the trial court in its Motion for a New Trial after remand from the Alabama Supreme Court (at 3, see CR 3) and at oral argument on that motion (see CR 116-117), and in the Alabama Supreme Court in its brief below (at 25, 42-44)." [Pet. at 27, n. 10]. Petitioner wholly neglects to point out, however, that its original motion for new trial did not raise this issue. Moreover, petitioner's belated attempt to amend its original motion for new trial *after* remand was the subject of a motion to strike by Ms. Thomas. [CR 25-29]. Under established Alabama law, constitutional issues may not be raised for the first time in a motion for new trial. *Marion v. Hall* 429 So.2d 937 (Ala. 1983); *Talley v. A & M Construction Co.*, 284 Ala. 371, 373, 225 So.2d 359 (1969); *Hicks v. Huggins*, 405 So.2d 1324, 1327, (Ala. Civ. App.), *cert. den.* 405 So.2d 1328 (Ala. 1981); *Hughes v. Hughes*, 362 So.2d 910, 916 (Ala. Civ. App. 1978); *Dale v. Dale*, 54 Ala. App. 505, 310 So.2d 225 (1975). Ultimately, the lower courts refused to pass upon this issue.

Having failed to timely raise this constitutional question in the courts below, petitioner is not entitled to review in this Court. No special circumstances exist in this case which would cause this Court to depart from its customary practice of refusing to exercise certiorari jurisdiction over questions not properly raised below.

2. Comity and the Absence of a Properly Developed Record Mandate Denial of the Petition

In *Bankers Life & Casualty Co. v. Crenshaw*, 486 U.S. 71, 100 L. Ed. 2d 62 (1988), this Court noted that it declines to exercise its certiorari jurisdiction under circumstances very similar to the instant case:

"In determining whether to exercise jurisdiction over questions not properly raised below, the Court has focused on the policies that animate the 'not pressed or passed upon below' rule. These policies are first, comity to the States, and second, a constellation of practical considerations, chief among which is our own need for a properly developed record on appeal. See *Webb v. Webb*, [*supra*] at 500-501, 68 L. Ed. 2d 392, 101 S. Ct. 1889. Because the chief issue appellant would have us resolve – whether the Eighth Amendment's Excessive Fines Clause serves to limit punitive damages in state civil cases – is a question of some moment and difficulty, these policies apply with special force. See *Illinois v. Gates*, [*supra*], at 224, 76 L. Ed. 2d 527, 103 S. Ct. 2317 ("Where difficult issues of great public importance are involved, there are strong reasons to adhere scrupulously to the customary limitations on our discretion"); *Mishkin v. New*

York, 383 U.S., at 512-513, 16 L.Ed.2d 56, 86 S. Ct. 958 ("The far-reaching and important questions tendered by this claim are not presented by the record with sufficient clarity to require or justify their decision").

Id. at 79, 100 L.Ed.2d at 72-73. The manner in which petitioner seeks to invoke this Court's certiorari jurisdiction here raises similar concerns. Petitioner has offered no compelling reason why the principles which led this Court to deny review in *Crenshaw* should not be followed in the instant case.

In the interest of comity, the Alabama Supreme Court was never presented with a properly preserved vagueness challenge. It would offend principles of federalism to review that court's decision on a basis never presented to it.

Moreover, petitioner's failure to timely raise this issue has resulted in the complete absence of a properly developed record on appeal. In the absence of such a record, the difficult questions proposed to be raised by petitioner would be made even more difficult.

As noted in *Crenshaw*, this Court adheres scrupulously to customary limits on its discretion when difficult and important issues are involved. Under the clear holding of *Crenshaw*, petitioner's failure to properly raise the constitutional issue in Alabama, and the consequent lack of a properly developed record, should lead this Court to summarily deny the instant petition as to petitioner's proposed vagueness claim.

B. PROPORTIONALITY

With respect to petitioner's proposed "proportionality" challenge, petitioner has likewise failed to carry its burden of persuasion.

1. *Haslip* Does Not Require That Punitive Damages Be Proportional to Compensatory Damages

Petitioner bases its argument upon an erroneous interpretation of this Court's decision in *Pacific Mutual Ins. Co. v. Haslip*, 111 S. Ct. 1032 (1991). Petitioner contends that *Haslip* requires punitive damages to bear some mathematical relationship to the amount of compensatory damages. However, in *Haslip*, a majority of the Court held:

"We need not, and indeed we cannot, draw a mathematical bright line between the constitutionally acceptable and the constitutionally unacceptable that would fit every case. We can say, however, that general concerns of reasonableness and adequate guidance from the court when the case is tried to a jury properly enter into the constitutional calculus. With these concerns in mind, we review the constitutionality of the punitive damages awarded in this case."

Id. at 1043. (citations omitted; emphasis added). The emphasized language makes clear that the Court expressly intended *not* to "draw a mathematical bright line between the constitutionally acceptable and the constitutionally unacceptable that would fit every case." *Id.* However, this is exactly what petitioner proposes to have this Court do through its petition.

Petitioner's proposed argument is premised entirely upon the following five sentences from the *Haslip* opinion:

"We are aware that the punitive damages awarded in this case is more than 4 times the amount of compensatory damages, is more than 200 times the out-of-pocket expenses of respondent Haslip, . . . , and, of course, is much in excess of the fine that could be imposed for insurance fraud under *Ala. Code* §§ 13A-5-11 and 13A-5-12(a) (1982), and §§ 27-1-12, 27-12-17, and 27-12-23 (1986). Imprisonment, however, could also be required of an individual in the criminal context. While the monetary comparisons are wide, and, indeed, may be close to the line, the award here did not lack objective criteria. We conclude, after careful consideration, that *in this case* it does not cross the line into the area of constitutional impropriety. Accordingly, Pacific Mutual's due process challenge must be, and is, rejected."

Id. at 1046. (citations omitted; emphasis added). A simple reading of this language clearly reveals the Court did not hold that punitive damages may *never* exceed a "multiple of four or five" times compensatory damages in *any* case in order to be constitutionally valid. In fact, the Court expressly confined its holding to "this case".

In light of the previously-quoted language concerning the Court's refusal to "draw a mathematical bright line between the constitutionally acceptable and the constitutionally unacceptable that would fit every case", it is simply unreasonable to conclude that punitive damages must meet some "multiple cap" test before they are constitutionally valid. Instead, as noted by the Court in

Haslip, the "constitutional calculus" must be resolved through "general concerns of reasonableness and adequate guidance from the court".

2. Due Process Does Not Require Mathematical Proportionality

Petitioner admitted in the court below (See, Principal's Brief on Second Appeal at p. 22) that the harm caused by its misconduct includes "more than a mere loss of money". Nevertheless, petitioner argued, and proposes to argue to this Court, that the jury's verdict in this case must bear some mathematical relationship to the actual monetary damages suffered by Ms. Thomas. The Alabama Supreme Court soundly rejected this argument in this case, (Pet. at pp. 2a-5a), just as it had done on previous occasions. For example, in *Nationwide Mutual Insurance Co. v. Clay*, 525 So.2d 1339 (Ala. 1987), the court stated:

"Nationwide argues that punitive damages should bear some particular mathematical relationship to compensatory damages. However, we have repeatedly held that *punitive damages need not necessarily bear any particular relationship to compensatory damages*. *U-Haul Co. of Alabama v. Long*, 382 So.2d 545 (Ala. 1980). We have said that decisions on punitive damages must be made on a case by case basis. . . ."

Id. at 1344 (emphasis added).

Most recently, in *Southern Life & Health Ins. Co. v. Turner*, [Ms. 88-1289, Aug. 23, 1991], ___ So.2d ___ (Ala. 1991), the Alabama Supreme Court, on remand from this

Court, expressly rejected the proportionality argument in a case involving \$500,000 in punitive damages and only \$1,000 in compensatory damages:

"The only means to ensure that punitive damages awards fall within the bounds of due process imposed by the Alabama and United States Constitutions is to evaluate the facts and merits of each case according to the factors set out in *Green Oil Co.* and *Central Alabama Elec. Co-Op.* A constitutionally permissible punitive damages award against a wealthy defendant, who engages in egregious conduct that fortuitously does little real harm but has the potential to do great harm, might involve a greater ratio of punitive damages to compensatory damages than that in this case. In contrast, a constitutionally permissible punitive damages award against a poor defendant, whose reckless conduct causes great actual harm, might require a lower ratio of punitive to compensatory damages than that in this case. *We find no compelling reason to set an arbitrary mathematical relationship between compensatory and punitive damages. Imposing such a relationship would inevitably result in injustice, and we decline to impose it.*

"Accordingly, we conclude that the trial court's remittitur of the jury verdict properly followed our guidelines in *Hammond*, *Green Oil Co.*, and *Central Alabama Elec. Co-Op* and resulted in an award of punitive damages that was rationally related to punishing the wrongdoers and to deterring similar conduct in the future. It follows that the trial court's judgment complies with the due process requirements articulated in *Haslip*. That judgment is therefore

due to be affirmed upon our reconsideration on remand."

Id. at ____ (emphasis added). Consequently, the court reaffirmed the trial court's judgement of \$500,000.

The Fifth Circuit Court of Appeals has also rejected the strict proportionality argument. In *Eichenseer v. Reserve Life Insurance Company*, 934 F.2d 1377 (5th Cir. 1991), the Fifth Circuit, also on remand from this Court, found that a punitive verdict of \$500,000.00 did not violate due process even though the compensatory damages amounted to only \$1000.00 (a punitive/compensatory ratio of 500 to 1). In so holding, the court observed:

"The size of an award of punitive damages and the relationship between the award and the amount of compensatory damages are relevant factors in determining whether the award is constitutional, but these factors are not dispositive. A substantial punitive damages award, even one that is several times the amount of compensatory damages, might meet due process muster in one case, and yet be constitutionally invalid in another."

Id. at 1384. In rejecting the strict proportionality approach, the Fifth Circuit noted:

"Reserve Life misconceives the differential nature of the due process standard in *Haslip*. It argues that the \$500,000.00 punitive damages award is unconstitutional on its face because it exceeds the amount of the plaintiff's compensatory damages by a ratio of 500 to 1. The insurer suggests that because the \$840,000 award in *Haslip* was 'close' to the line of constitutional impropriety even though it was four times the

amount of the compensatory damages, the award in the instant cases is well beyond the line of constitutional impropriety. The Court in *Haslip*, however, expressly rejected a 'mathematical bright line' test of constitutionality. 111 S. Ct. at 1043. Perhaps in some cases – even in many cases – an award of punitive damages that is five hundred times the amount of the compensatory damages will violate due process. This is not such a case. Sufficient circumstances indicate that the award of punitive damages against Reserve Life was well reasoned and, indeed, reasonable."

Id. The court concluded:

"Thus, after *Haslip*, an award of punitive damages is constitutional *if the circumstances of the case indicate that the award is reasonable and the procedure used in assessing and reviewing the award imposes a sufficiently definite and meaningful constraint on the discretion of the factfinder.*"

Id. at 1381-82 (emphasis added).

In upholding the \$500,00 verdict, the Fifth Circuit first considered whether the verdict was *reasonable* under the circumstances of the case. Finding the amount of the verdict reasonable, the Fifth Circuit considered the following factors: (1) that Reserve Life's conduct in totally refusing to investigate the insured's claim was "particularly egregious", noting that a "mere slap on the wrist is inadequate to punish such conduct."; (2) that Reserve Life had a net worth of \$157,000,000.00, and that, a "small award of punitive damages would have little deterrent effect against a corporation of Reserve Life's magnitude";

and (3) that Reserve Life had previously been held liable for smaller punitive damages awards, but such smaller awards had "little effect on the manner in which Reserve Life handled claims", thus justifying a larger award. *Id.* at 1382-84.⁴

The Fifth Circuit next considered whether Mississippi's punitive damages procedure imposed "a sufficiently definite and meaningful constraint on the discretion of the factfinder." In essence, the Fifth Circuit conducted the same type of analysis with respect to Mississippi's punitive damage procedure that this Court conducted on Alabama's procedure in *Haslip*. Like this Court in *Haslip*, the Fifth Circuit approved Mississippi's procedure.

In keeping with the approach approved in *Haslip*, the Alabama Supreme Court rejected the proportionality argument in this case. In affirming the trial court's refusal to remit the jury's verdict, the Alabama Supreme Court conducted its appellate review pursuant to *Hammond* and *Green Oil*.⁵ In rejecting petitioner's proportionality argument, the court considered the severity of the insurance company's misconduct, the profit realized by the insurance company, and the net worth of the insurance company (which was "measured in the billions of dollars"). Ultimately, the court found that the amount of the jury's

⁴ It is worth noting that this "reasonableness" test bears a striking similarity to the post-judgment procedures already followed in Alabama and approved by this Court in *Haslip*.

⁵ *Hammond v. City of Gadsden*, 493 So. 2d 1374 (Ala. 1986) and *Green Oil Co. v. Hornsby*, 539 So. 2d 218 (Ala. 1989).

verdict was reasonable under the circumstances. [Pet. at 4a].

Ironically, the Alabama Supreme Court found that the small amount of contract damages actually *supported* the jury's verdict. "[I]f there is evidence that an insurance company engages in a pattern or practice of refusing to pay any borderline claims involving small amounts (so small that it would be difficult for the insured to obtain an attorney to properly evaluate or handle the collection of those claims), that would be very reprehensible conduct." [Pet. at 3a].

The court also found significant that the plaintiff's lawyers had spent over \$9,000.00 in out of pocket expenses in litigating an insurance claim of only \$1000. The court ruled that if the amount of punitive damages could not substantially exceed the amount of contract damages, a deserving plaintiff might be deprived "of her day in court" because the expenses of litigation would exceed the recovery. The court asked rhetorically: "How many lawyers will take this mother's case, knowing that they will have to pay more in out-of-pocket expenses to recover this \$1,000.00 than they will be paid if they recover the entire \$1,000.00?" [Pet. at 3a].

In essence, the Alabama Supreme Court ruled that, under the totality of the circumstances of the case, the jury's verdict was reasonable. In keeping with its previous decisions,⁶ the court held that punishment must be

⁶ This is not the first time the Alabama Supreme Court has rejected the proportionality argument. See, *Nationwide Mutual Insurance Co. v. Clay*, 525 So. 2d 1339, 1349 (Ala. 1987) ("punitive

metered according to the *misconduct*, not something so random as the amount of compensatory damages involved.

The trial court likewise rejected petitioner's proportionality argument:

"Although the evidence at trial established that the actual monetary loss suffered by Ms. Thomas was \$1,000.00, the harm caused by defendant's misconduct cannot be measured simply by reference to the amount of insurance involved. The very purpose of the insurance was to provide a parent, aggrieved by the untimely loss of a child, with a relatively small death benefit to assist with expenses during a time of crisis. The evidence (which was excluded from the jury) established that Ms. Thomas needed the \$1,000.00 proceeds to help pay for Melinda's funeral expenses. Defendant knew that Ms. Thomas needed the proceeds for this purpose. The Alabama Supreme Court's decisions reflect that the policy underlying the tort of bad faith is 'that an insured purchases insurance and not an unjustified court battle when he enters into the insurance contract.' *Gulf Atlantic Life Ins. Co. v. Barnes*, 405 So.2d 916, 925 (Ala. 1981). 'The law will not allow an insurer to willfully refuse to evaluate or honor a claim

damages need not necessarily bear any particular relationship to compensatory damages"); *Alfa Mutual Ins. Co. v. Northington*, 561 So.2d 1041 (Ala. 1990) (punitive damages award of \$300,000 for insurance fraud affirmed where actual damages had been only \$3057.00 – a ratio of nearly 100 times); *The Standard Plan, Inc. v. Tucker*, [Ms. 89-1397, Mar. 15, 1991], ___ So.2d ___ (Ala. 1991) (\$500,000 punitive damages verdict not excessive even though jury awarded only \$1,083.19 in compensatory damages).

with the knowledge that the avowed purpose of the insurance contract was to protect the insured at his weakest and most perilous time of need.' *Vincent v. Blue Cross-Blue Shield of Alabama*, 373 So.2d 1054, 1067 (Ala. 1979). The very purpose of the jury's verdict was to punish the defendant for forcing Ms. Thomas into an unnecessary, prolonged court battle over a \$1,000.00 claim which should have been paid, according to the evidence, without dispute or delay."

[Pet. at 25a].

The holdings of the Alabama Supreme Court and the Fifth Circuit Court of Appeals are consistent with the findings of other state supreme courts. In *Kirkeride v. Lisbon Contractors, Inc.*, 555 A. 2d 800 (Pa. 1989), the Supreme Court of Pennsylvania, after observing that the Restatement (Second) of Torts, § 908(2) does not require that punitive damages be proportional to compensatory damages, held:

"If the purpose of punitive damages is to punish a tortfeasor for outrageous conduct and to deter him or others from similar conduct, then a requirement of proportionality defeats that purpose. . . . If we were to adopt Appellee's theory, outrageous conduct, which only by luck results in nominal damages, would not be deterred and the sole purpose of a punitive damage award would be frustrated. If the resulting punishment is relatively small when compared with the potential reward of his actions, it might be feasible for a tortfeasor to attempt the same outrageous conduct a second time. If the amount of

punitive damages must bear a reasonable relationship to the injury suffered, then those damages probably would not serve as a deterrent. It becomes clear that requiring punitive damages to be reasonably related to compensatory damages would not only usurp the jury's function of weighing the factors set forth in Section 908 of the Restatement (Second) of Torts, but would also prohibit victims of malicious conduct, who fortuitously were not harmed, from deterring future attacks.

"We are, however, cognizant that at some point the amount of punitive damages may be so disproportionate when compared to the character of the act, the nature and extent of the harm and the wealth of the defendant, that it will shock the court's sense of justice. In those rare instances, the court is given discretion to remit the damages to a more reasonable amount."

Id. at 803-804.

In *Crookston v. Fire Insurance Exchange*, [MS-880034, June 28, 1991], 1991 WL 115521, __ P. 2d __ (Utah 1991), the Utah Supreme Court observed:

"[T]he absolute ceiling approach is too mechanical and could potentially defeat the very purpose of punitive damages. . . . For example, strict dollar amount, percentage of the defendant's wealth, and ratio ceilings all would allow potential defendants to calculate their exposure to liability in advance, thus diminishing the deterrent effect of punitive damages. In addition, such absolute ceilings do not provide the flexibility needed to deal adequately with the type of case that involves only minimal actual

damages, but when the conduct of the defendant is so flagrant as to justify a large punitive award."

Id. at ____ (citations omitted). As these courts have observed, any requirement that punitive damages be a "multiple of" or be "proportional" to punitive damages would frustrate and possibly destroy the very purpose for which the damages are awarded in the first place.

Since this Court has already approved Alabama's procedure of assessing and reviewing punitive damages awards in *Haslip*, the only plausible question with respect to a properly reviewed Alabama punitive damages verdict is whether a jury's verdict of punitive damages is *reasonable* under the circumstances of a case. This is the essence of the *Hammond* and *Green Oil* procedure presently followed by Alabama courts. Granting the instant petition would serve only to determine whether the lower courts made accurate factual findings.

Both the trial court and the Alabama Supreme Court concluded that the jury's verdict meters punishment against petitioner in proportion to its misconduct and the grievous harm and insult caused thereby. In short, both courts found that the jury's verdict is *reasonable* under the evidence. Although petitioner would have this Court reassess the findings of the courts below, the instant case clearly does not implicate concerns under the due process clause.



CONCLUSION

The petition for writ of certiorari should be denied.

Respectfully submitted,

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